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## **DEPARTMENT OF LABOR**

### **Wage and Hour Division**

#### **29 CFR Part 541**

#### **RIN 1235-AA20**

### **Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees; Correction**

**AGENCY:** Wage and Hour Division, Department of Labor.

**ACTION:** Final rule; technical correction and correcting amendments.

**SUMMARY:** On September 27, 2019, the Department of Labor published in the Federal Register a final rule updating and revising the regulations issued under the Fair Labor Standards Act implementing the exemptions from minimum wage and overtime pay requirements for executive, administrative, professional, outside sales, and computer employees. This final rule was effective on January 1, 2020. Through publication of this document, the Department corrects certain regulatory text.

**DATES:** This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**FOR FURTHER INFORMATION CONTACT:** Amy DeBisschop, Director, Division of Regulations, Legislation, and Interpretation, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, NW, Washington, DC 20210, telephone: (202) 693-0406 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** The Department of Labor published a final rule in the Federal Register on September 27, 2019 titled, Defining and Delimiting the Exemptions for Executive, Administrative, Professional, Outside Sales and Computer Employees. 84 FR 51230. Due to an error in the instructions for amending 29 CFR 541.601 (Highly compensated employees), the final rule erroneously deleted regulatory text of § 541.601(b)(3) and (4) (page 51307), when the Department’s intent was only to revise § 541.601(b)(1) and (2), but to leave paragraphs (b)(3) and (4) unchanged. The Department restores these two provisions in this correction. Further, the Department here deletes § 541.607 (Automatic updates to amounts of salary and compensation required), which should have been deleted in the final rule. In the Notice of Proposed Rulemaking, the Department proposed to delete § 541.607, while affirming its intention to propose increasing the earnings thresholds every four years. 84 FR 10900, 10915 (Mar. 22, 2019). In the final rule the Department declined to finalize its proposal to propose updates quadrennially, and instead reaffirmed its commitment to better implement Congress’s instruction to define and delimit the EAP exemptions “‘from time to time’” through regulations. 84 FR 51252 (citing 29 U.S.C. 213(a)(1)). However, due to an error, the Department failed to remove and reserve the regulatory text section in the instructions. The Department corrects these errors with this action.

Section 553(b)(3) of the Administrative Procedure Act (APA) provides that an agency is not required to publish a notice of proposed rulemaking and solicit public comments when the agency has good cause to find that doing so would be “‘impracticable, unnecessary, or contrary to the public interest.’” 5 U.S.C. 553(b)(3). The Department finds that good cause exists to dispense with the notice and public comment procedures for this correction to its regulations, as it concludes that such procedures are unnecessary because this rule merely corrects inadvertent

errors in regulatory instructions. Section 553(d) of the APA also provides that substantive rules should take effect not less than 30 days after the date they are published unless “otherwise provided by the agency for good cause found[.]” 5 U.S.C. 553(d)(3). Since this rule is a correction that does not change the substance of the Department’s regulations, the Department finds that it is unnecessary to delay the effective date of the rule. Therefore, the Department is issuing this correction as a final rule effective on the date of publication.

#### **List of Subjects in 29 CFR Part 541**

Labor, Minimum wages, Overtime pay, Salaries, Teachers, Wages.

For the reasons set out in the preamble, the Department of Labor corrects 29 CFR part 541 by making the following correcting amendments:

#### **PART 541--DEFINING AND DELIMITING THE EXEMPTIONS FOR EXECUTIVE, ADMINISTRATIVE, PROFESSIONAL, COMPUTER AND OUTSIDE SALES EMPLOYEES**

1. The authority citation for part 541 continues to read as follows:

Authority: 29 U.S.C. 213; Pub. L. 101-583, 104 Stat. 2871; Reorganization Plan No. 6 of 1950 (3 CFR, 1945-53 Comp., p. 1004); Secretary’s Order 01-2014 (Dec. 19, 2014), 79 FR 77527 (Dec. 24, 2014).

2. In § 541.601, add paragraphs (b)(3) and (4) to read as follows:

#### **§ 541.601 Highly compensated employees.**

\* \* \* \* \*

(b) \* \* \*

(3) An employee who does not work a full year for the employer, either because the employee is newly hired after the beginning of the year or ends the employment before the end

of the year, may qualify for exemption under this section if the employee receives a *pro rata* portion of the minimum amount established in paragraph (a) of this section, based upon the number of weeks that the employee will be or has been employed. An employer may make one final payment as under paragraph (b)(2) of this section within one month after the end of employment.

(4) The employer may utilize any 52-week period as the year, such as a calendar year, a fiscal year, or an anniversary of hire year. If the employer does not identify some other year period in advance, the calendar year will apply.

\* \* \* \* \*

**§ 541.607 [Removed and Reserved]**

3. Remove and reserve § 541.607.

Signed at Washington, D.C. this 29<sup>th</sup> day of May, 2020.

Cheryl M. Stanton,

Administrator, Wage and Hour Division.

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